IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001728

First-tier Tribunal No: HU/08119/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd January 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

Jenis Ifill
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Fazli, Counsel instructed by Equity Law
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 24 January 2023 and 18 May 2023

DECISION AND REASONS

1. I see no need for and do not make an anonymity order in this case.

2. This is an appeal by a citizen of Barbados against the decision of the Respondent refusing her leave to remain on human rights grounds. The appeal has previously been determined unsatisfactorily in the First-tier Tribunal. I found that the First-tier Tribunal had erred in law and set aside its decision and append my reasons for finding an error of law to this decision and reasons. I ordered that the appeal be heard again in the First-tier Tribunal.

3. The Appellant is subject to a deportation order. In outline it is her case that removing her from the United Kingdom would be a disproportionate interference with her private and family life particularly her need to obtain medical treatment and/or in the alternative her rights under Article 3 of the European Convention on Human Rights because she has severe physical ill-health.

4. I heard oral evidence from the Appellant on both occasions when the appeal hearing was before me. It was adjourned in January at the Appellant's representative's request to obtain further medical evidence. This was done but it

took longer than expected. I make it plain that I am not criticising the solicitors in any way, it is just what happened. However, before I look at her evidence there is other evidence that I think needs to be outlined in order to consider the decision.

5. I begin by looking at the Secretary of State's.

6. The Appellant was born in October 1952 and so is now 70 years old.

7. I begin by considering the "Decision to Refuse her Human Rights Claim" dated 9 October 2020. This notes that the Appellant claims to have arrived in the United Kingdom sometime in 2002 when she was 50 years old but there was no independent evidence to support this claim.

8. On 12 July 2006 she was convicted at the Inner London Crown Court on three counts of theft by an employee and, according to the Respondent, fined a total of £5,915. This did not come to the attention of the Respondent.

9. On 16 July 2016 she was convicted at the Central Criminal Court of offences under the Theft Act. This, according to paragraph 5 of the Refusal Letter, comprised possessing or controlling identity documents with intent and three counts of making false representations to make gain for self or another or cause loss to another or expose another to risk.

10. She was sentenced to nine months' imprisonment on the first count and three months on each of the false representation counts. She was sentenced to six months' imprisonment to be served concurrently with each other and consecutively to the nine months' sentence. It follows that although she was sentenced to a total of fifteen months' imprisonment the longest term was of nine months.

11. The Respondent noted a history of submissions to the Respondent including an application to revoke a deportation order made on 23 November 2016 with a letter issued by the Home Office showing that she had ILR but enquiries showed that the letter was false.

12. The Respondent acknowledged evidence relating to the Appellant's health but also relied on a Country of Origin Information request that revealed that Barbados had a high standard of healthcare that was accessible to all. It was the Respondent's view that good quality healthcare suitable for the Appellant's needs was available in Barbados and accessible to her.

13. It was also the Respondent's view that removal would not be a disproportionate interference with her private and family life. Significantly the Appellant did not claim to have a relationship with a minor child or a life partner and the analysis was firmly directed to the "private life" end of the "private and family life" continuum. It was found that the Appellant had no significant ties to the United Kingdom and did not made good her claim to have been employed and paid tax as required. The Respondent did not accept that there would be any very significant obstacles in the way of her returning to Barbados and establishing herself there. Similarly there were no very compelling circumstances such that she should not be deported. Appended to the letter, or with it ,was a summary of the judge's sentencing remarks. There the Appellant was described as a "thoroughly dishonest woman" and the sentences were outlined. The judge's sentencing remarks say little about the nature of the offences or their severity other than the conduct justifying the sentence imposed. There is a court log of some kind that refers to the "deportation reason" that says "This defendant is liable to deportation because the defendant is a foreign national and has received a custodial sentence of twelve months or more."

14. There is then a decision to make a deportation order dated 22 July 2016. It begins by saying that the Appellant was convicted at the Central Criminal Court on 15 July 2016 and was sentenced to one year and three months' imprisonment. The letter noted the Appellant had an earlier conviction and continues: "As a result of your criminality, your deportation is considered to be conducive to the public good and as such you are liable to deportation by virtue of Section 3(5)(a) of the Immigration Act 1971". Section 3(5)(a) identifies a person as liable to deportation if they are in the United Kingdom and not a British citizen and the Secretary of State deems deportation to be conducive to the public good.

15. The Home Office noted the Appellant's claim to have indefinite leave to remain in the United Kingdom but found no record of it and said that on the Home Office records the Appellant had no legal basis to be in the United Kingdom.

16. There was a "Decision to Refuse a Human Rights Claim dated 17 September 2017".

17. The letter acknowledged that the Appellant had served a sentence of nine months' imprisonment and a further six months on three counts to be served consecutively and said at paragraph 20:

> "Your deportation is conducive to the public good and in the public interest because you have been convicted of an offence which has caused serious harm. Whilst it is acknowledged that your specific offences did not cause serious harm to a specific person, the Secretary of State takes a dim view on fraud and false documentary based offences that contribute to a wider issue which causes serious harm to the security of the UK.
>
> Therefore, in accordance with paragraph 398 of the Immigration Rules, the public interest requires your deportation unless an exception to deportation applies. The exceptions are set out at paragraphs 399 and 399A of the Immigration Rules."

18. As far as I can see this is the high watermark of the Respondent's case. The Appellant's criminal activity caused serious harm. It was expressed to be a contribution to a wider issue that has caused harm to the security of the UK.

19. For reason that will be come apparent, I will have to give careful thought to the question of whether this Appellant has actually caused serious harm.

20. After noting that the Appellant did not claim to have a parental relationship or a life partner the Respondent then considered the Appellant's private life. Paragraph 399A of the Immigration Rules provides exceptions in certain circumstances but the starting prerequisite is that the Appellant had spent most of her life in the United Kingdom lawfully and there is no evidence that the Appellant was ever in the United Kingdom lawfully. It was not even accepted that she had been in the United Kingdom since 2002 as she claimed.

21. The Appellant maintained that she thought she had indefinite leave to remain and that she had had a letter to that effect but it was that letter that was found to be a false letter and was the basis of her criminal conviction at the Old Bailey. There was no evidence of cultural integration. Her claim to have been employed and paid taxes was not substantiated and the Respondent asserted that the Appellant's criminality "runs counter to any claim to be socially and culturally integrated in the UK".

22. The Respondent did not accept that there would be very significant obstacles to her integration into life in Barbados. On her own story she had lived there until she was 50 years old and that was considered to be long enough to have a good knowledge of the country. At that time there had been no submissions that she

had no family in Barbados to help her but the Respondent saw no particular difficulty in her establishing herself on her own. She had not lost touch with the country. No very compelling circumstances came to light.

23. The papers include a copy of the information laid in the Magistrates' Court. The first information alleges that between 23 October 2012 and 27 August 2015 she had in her possession or control of an identity document, namely a letter purporting to be from the Home Office, "which was false and which you knew or believed to be false with the intention of using it to establish personal information about yourself" contrary to Section 4(1) of the Identity Documents Act 2010. Additionally there were three informations similar to each other alleging that on days in October 2012, February 2013 and March 2013 that Appellant made claims supported by a national insurance number that was not hers. The information identified offences under the Housing and Council Tax Benefit Fraud Act 2006.

24. There was then a volume of evidence relating to the Appellant's physical health. I do not find it appropriate to comment on all of it, partly out of respect for her privacy. I do make observations about some of the more recent evidence.

25. The letter from the Guys and St Thomas' Hospital dated 16 February 2003 refers to a previous fibrous tumour recurrence in 2018, stoma reversed. The Appellant complained on 15 March 2023 of "probable multi-focal low-grade solitary fibrous tumour". She complained how in 2006 there were concerns about bleeding and fibroid problems including chronic renal impairment, now complaining of pain in the reverse or stoma site. A further letter (page 27 of 340, page 28 in the bundle) and related to her cancer.

26. There are appointment cards indicating the Appellant has MRI scans. The letter from the Royal Marsden NHS Foundation Trust dated 15 March 2023. It concludes:

> "This lady is currently under our care with multi-focal solitary fibrous tumour. She continues under surveillance. This will continue for four monthly for the next two visits which will reduce in frequency to six monthly for the following year and then annually. If the disease remains in remission then we will discharge after 2028. She will be surveilled with MRI Abdomen and Pelvis and Chest x-ray".

27. The Appellant has supported her case with a witness statement dated 17 May 2021. My copy is not signed. The Appellant gave evidence before me and adopted her statement. There the Appellant said that she was born in Barbados in 1952. Her parents came to the United Kingdom in the 1960s and continued to live there where they worked in a paper factory.

28. The Appellant said that she travelled constantly to the United Kingdom with her mother from the age of 12 but was schooled in Barbados coming to the United Kingdom during the holidays. She said that she "travelled back constantly to the UK from Barbados and returned to Barbados whenever I wanted to until 2002".

29. She then explained when she returned to the United Kingdom at the age of 15 in 2002 she had a visa valid for six months and made an application for indefinite leave to remain. She said that she was given an appointment by an officer at the Home Office at Luna House in Croydon and completed a form and paid a fee and that after a couple of weeks received her Indefinite Leave to Remain. She then applied for and was given a national insurance card and applied for and got a job.

30. She said how in 2005 she was working as an assistant manager training for the manager's position at a store with a view to managing a new store that was to

be opened in two months. She was asked by her manager to take two rings to a nearby pawn shop. She did as requested and gave him the money and the receipt and the got on with her work. Two weeks later the manager left the company.

31. It turned out that the rings were not the manager's to pawn and she was arrested and convicted of theft and fined £5,000 and no doubt ordered to pay other costs. She said she lost her job and paid the fine.

32. She did get a job but the business did not last but had paid off £1,000 or her find and arrangements were made to pay by instalments.

33. She said she got a part-time job eventually in paying off her debt.

34. In 2016 she was getting ready for work at 6 o'clock in the morning when she was disturbed by a fraud officer and arrested. She has been in the United Kingdom since 2002 and believed that she was entitled to be but she was not believed. She went to prison.

35. She then talked about health problems beginning in 2006. She started menopause at the age of 35. She explained various health problems which are all significant and the treatment received. She had treatment under surgery that may not have been satisfactory and investigated the possibility of the medical negligence action. She also had problems with her knees.

36. She did not see how she can manage in Barbados. In answer to additional questions she said that she arrived in March 2002 but could not remember the precise date and had never left the United Kingdom since arriving.

37. She said that she took seven tablets every morning and four in the evening and other tablets during the day.

38. She did know that some of the medication she took was not available in Barbados.

39. She insisted she had nobody in Barbados to help her. She said she was the last living child of her parents who died after returning to Barbados. Her sister died nine years ago.

40. She said she was too old to work in Barbados. She was 70 and would not obtain work.

41. She was cross-examined.

42. She insisted that she should not have been convicted either in 2006 or in 2016. She insisted that in both cases she was the victim of other people's activities. She accepted in cross-examination that the letter that was found to be a false letter had been used successfully to help her get accommodation and work because it had helped her get a national insurance number but she insisted she had not acted dishonestly in obtaining the letter.

43. She was then asked about her medical condition and it became apparent that the medical evidence was rather out of date and this led to the adjournment application that I have outlined above.

44. She was asked questions about her medical condition. She accepted that the stoma bag had been moved and there had been "reversal" but the outcome was disappointing. She was also having problems with her pelvic region. She outlined with as much dignity as she could treatment that had been suggested to help her establish a better bowel routine and she explained that that was not successful, she had been told there are other strategies to try but at the moment

she was using a procedure that was rather unpleasant and there was no sign yet of it working.

45. She denied having any close friends in the United Kingdom. She had found a "next of kin" to satisfy the requirements of the hospital but the person named there was not close to her and did not attend hospital with her and did not live with her.

46. She had not made enquiries about treatment in Barbados.

47. She said that she did everything on her own. She travelled to the hearing room on her own. She lived on her own. She took care of herself and did not have help with her daily needs.

48. She was asked about the case summary suggesting that she had a negligence action against the Health Service but there was no reason to think from her answers that there was any great progress in that possible action.

49. She insisted that her mother was dead; her last family member who was her sister, died three years ago and she said she had no brothers.

50. She was asked about her last family member in Barbados and said it was her sister who died of dementia. She had been living on her own and did not know the Appellant when the Appellant contacted her by telephone and she gave up trying. She has learnt of her sister's death because of an announcement in the newspaper that circulates in the United Kingdom in the ex-pat community. She said she had worked in Barbados. She worked in a government job and had qualifications in accounting.

51. In re-examination she insisted that she had no friends in Barbados and that she needed the medical attention she gets in the United Kingdom.

52. I have considered the Decision and Reasons promulgated on 4 October 2021 following a hearing on 13 September 2021 at Taylor House. The Judge recorded at paragraph 27 the following:

> "… The Appellant had lived 'by herself' but claimed not to have any family living in Barbados any more. I 'lived with my mum before she died'. Her sister inherited her house. She could not remember when or when her aunt had taken on the house. Her mother's sister had also died but she could not remember when she died either. It was, she thought, 'since 2001'. She was then asked about her own siblings and she said that: 'Her last sister died five months ago'. She was also asked about cousins. She did not know them or even their names. She said: 'I had a niece but she had gone to the USA with her partner'."

53. I have reviewed all of the evidence before me.

54. I take the unusual step at this point of assuring the parties that although this Decision and Reasons is late it is based very closely indeed on a draft that I received from the typist on 5 June 2023 when the case very fresh. The delay is entirely my fault and I apologise for that but it is a delay in promulgation, not determination.

55. It is a striking feature of this case that there is so little to support the Appellant. She claims to have lived in the United Kingdom for over twenty years but has not produced any independent evidence to support that claim even though she knows it is contentious. She has not produced evidence from friends that she might have made in that time or contacts that she has made in that time. It is, if I may say so respectfully, almost pathetic that a person could live it the United Kingdom for any length of time and have so little support in the community.

56. On any version of events, she was in the United Kingdom in 2006 because that is when she was convicted and fined.

57. The Respondent's bundle includes a "Response to an Information Request Barbados: General Medical, Oncology and Tumours" dated 19 August 2020. This notes that Barbados has a "high standard of healthcare which is easily accessible to all" and then gives the details that explain that assertion. The core services are described as "well-developed". There is clearly care available for cancer patients.

58. Ms Ahmed's submissions were essentially very simple. She said the burden of proof is on the Appellant. The Appellant is not believable. The Appellant has caused serious harm by her criminal activities and cannot bring herself within the circumstances in part 5A of the Nationality, Immigration and Asylum Act 2002 that provide for successful appeals by people who are subject to deportation. She said there was no evidence that the Appellant could not obtain appropriate treatment in Barbados and there was evidence from the Secretary of State that she could. In any event, the evidence did not come close to supporting a finding that it would be contrary to her Article 3 rights to remove her. There is no evidence of a really serious condition or removal precipitating a sharp decline. There was no private and family life of any significance at all and the public interest required deportation.

59. Even if I took the view that the Appellant is not a foreign criminal for the purposes of part 5A because she had not caused serious harm, the fact remains she had no right to be in the United Kingdom and it is undesirable because of her criminal conduct.

60. Mr Fazli argued, contrarily, that the Appellant had not caused serious harm and that removal was a disproportionate interference with her private and family life given that she had no contacts in Barbados to support her or ability to earn an income or living there (she is over 70 years old) and there was no evidence of any contact or support for her there.

61. Before applying the law I consider my findings of fact.

62. I have to agree with Ms Ahmed and indeed everyone who decided the case so far that the Appellant is a profoundly unsatisfactory witness. Her failure to accept her guilt in the two matters that have led to criminal convictions without producing any evidence at all that might undermine the reliability of those convictions is, I find, revealing. The claim that she has been unjustly convicted on two quite separate occasions ten years apart of offences of dishonesty is on its face staggering. It does not follow from this that she cannot be telling the truth about anything she has said but it makes her hard to believe. She has been represented in these proceedings. It is very hard to think she did not appreciate the desirability of being able to flesh out her case.

63. There is no evidence to show when she came into the United Kingdom other than her own claim and she is unreliable. There is no evidence to show that she remained in the United Kingdom after getting into trouble in 2006. She may have done, but I can put it no higher than that. Her evidence about her lack of contacts in Barbados is unbelievable. I accept that there is an inherent plausibility about the case that a woman now 70 years old will not have any contacts in her country of nationality if she has not lived there for some time but the Appellant has plainly given an inconsistent account of her family links there. The version recorded by the First-tier Tribunal about her family sister and the evidence before me is clearly different but there is every reason why it should be told consistently. I really cannot rely on anything she says.

64. I also accept that the Appellant is poorly. There is medical evidence plainly confirming unpleasant sounding surgery with unsatisfactory outcomes and at the very least a suspicion of cancer which is alerting the doctors to make constant repeat examinations looking for further trouble. It is also plain that she has great problems managing her bowels and although she is being helped by skilled medical advice the results are not successful.

65. However, significant as this is, it is nothing like the kind of medical condition that founds an Article 3 claim. It really does not work.

66. I make it plain to the Appellant that in reaching this conclusion I am not minimising the health problems that she plainly has. There is good medical evidence of doctors recording that she has a form of cancer (this is mentioned above) and medical evidence of frequent appointments for various tests. These things are not conducted for the amusement of the medical practitioners involved. There are reasons to be concerned about her health. She does have problems as a result of the reversal of the stoma with the surgery leading to the removal of the stoma bag and that must be extremely unpleasant for her. I do not in any way minimise that but it is not life threatening and no reason at all to think the kind of good advice she gets in the United Kingdom could not be replicated in Barbados. She is not benefitting from highly specialised cutting edge advice in the United Kingdom and there is no reason to think, even if she were, that it would not be available to her in Barbados. That is part of the evidence that she has just not addressed. I reject any contention that it would be contrary to her Article 3 rights.

67. Just in case it is not apparent from what has already been said, this is not a case of automatic deportation. The UK Borders Act 2007 Section 32 provides for automatic deportation in the case of a person who is not a British citizen and who has been sentenced to a period of imprisonment of at least twelve months. However, the definition sections under “interpretation” of section 38 makes it plain beyond any kind of argument at Section 38(1)(b) that the period of twelve months “does not include a reference to a person who is sentenced to a period of imprisonment of at least twelve months only by virtue of being sentenced to consecutive sentences amounting in aggregate to no more than twelve months”.

68. The Secretary of State has made it equally plain that the decision to deport was based on it being conducive to the public good. Part 5A of the 2002 Act imposes particular considerations for “foreign criminals” and the term “foreign criminals” is defined and includes a person who is not a British citizen who has been sentenced to a period of imprisonment of at least twelve months, convicted of an offence as to cause serious harm, or is a persistent offender.

69. It seems to me beyond argument that these should be construed disjunctively. A period of imprisonment of twelve months is defined in Section 117D(4)(b) and, similar to the 2006/2007 Act, does not include a person whose sentence of twelve months is achieved only by consecutive sentences.

70. It follows that to be a foreign criminal for the purposes of the 2002 Act this Appellant has to have been convicted of an offence that has caused serious harm.

71. Ms Ahmed drew my attention to the meaning of “serious harm” set out in the “Criminality: Article 8 ECHR Cases Version 8” published by the Home Office on 13 May 2019. The section under “Serious Harm” raises two points of possible importance. First, it assets that “it is at the discretion of the Secretary of State whether he considers an offence to have caused serious harm”. It then goes on to say that:

> "An offence that has caused 'serious harm' means an offence that has caused serious physical or psychological harm to a victim or victims, or that has contributed to a widespread problem that causes serious harm to a community or to a society in general."

72. Both parties referred me to **Mahmood, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & anor [2020] EWCA Civ 717**. It is, I find, plain beyond argument following paragraph 56 of **Mahmood** that it is for the judicial decision maker applying part 5A to determine if the particular offender has caused serious harm. The Court of Appeal referred to "the views of the Secretary of State are a starting point and the reasoning of a decision letter may be compelling; but ultimately the issues that arise under s.117D(2)(c)(ii) will be a matter for the FtT". I do not read this as implying that any particular weight should be given to the views of the Secretary of State because they are the views of the Secretary of State. What matters is the quality of the reasons advanced.

73. Here I note that the Secretary of State has done little to justify the conclusion that the Appellant has caused serious harm beyond expressing the degree of irritation she feels towards those who abuse the immigration system. I accept that serious harm does not have to be shown to apply to a particular individual. Serious harm can be done to society generally by particular crimes. However, I also note the caution in **Mahmood** that admitting an offence of a kind that cumulatively is causing serious harm to society does not mean that an individual offence considered in isolation has caused serious harm. Ms Ahmed said that the Court of Appeal looked at the case of identity offences and said at paragraph 66:

> "No doubt each offence of this nature contributes to a serious and perhaps widespread problem. However, the issue under s.117D(2)(c)(ii) is whether the offender has been convicted of 'an offence' which has caused serious harm. We accept that an individual offence of this sort can be said to cause serious harm, but there has to be some evidence that it has done so. The decision letter refers to the undermining of the integrity of the revenue and benefits system, banking and employment, and even national security; but there was insufficient evidence of these offences, even if aggravated, had such an effect. These offences usually result in a prison sentence because identity fraud is regarded as a serious matter; but that cannot, of itself, be enough to satisfy to the requirements of causing 'serious harm'."

74. I find that it has *not* been shown that this Appellant's offending had caused serious harm. I make it plain that I am not suggesting that it was other than serious offending. It was offending that was dealt with, if I may respectfully say so, appropriately by sending the Appellant to prison for a total of fifteen months but the sentence did not satisfy the provisions for automatic deportation and, I am satisfied, has not been shown to have caused serious harm for the purposes of part 5A.

75. It was nevertheless offending which caused the Secretary of State to say that the Appellant's deportation would be conducive to the public good. Given that finding, I see no need to explore Mr Fazli's interesting submissions that Mahmood was wrongly decided.

76. I must now consider the Article 8 claim with reference to part 5A on the basis that the Appellant is not a foreign criminal for the purposes of that part of the Act and the additional considerations do not apply.

77. I begin with the obvious that the maintenance of effective immigration control is in the public interest. The Appellant is a person whose presence, the Secretary of

State has decided, is not conducive to the public good. The person has shown total disregard for immigration control and has committed criminal offences. It is plainly in the public interest that she is removed.

78. She claims to have been able to earn a living although does not seem able to earn a living now and has done little to contribute to society.

79. I am required by Section 117B(4) to give little weight to a private life established when the person is in the United Kingdom unlawfully. As I have commented above it is a surprising feature of this case that there is so little evidence to support the Appellant having established a private and family life at all. There was no evidence that she has established anything at the “family life” end of the continuum and private life is entirely nominal. She has made her home in the country unlawfully. I cannot give much weight to that.

80. I do have to decide if there are any very compelling circumstances in the way of her reestablishing herself in Barbados. I do not know how she will get on in Barbados. I do realise that she is a woman now 70 years of age with no obvious income stream. That is a matter of some concern but she has been so lacking in candour that I can make no sensible findings about what is available to her in her country of nationality. She has had every chance to deal with these things and has not taken it. I just do not know. I cannot move from there to say that she has shown that there would be particular difficulties or that there are very compelling circumstances. I do appreciate that there is credible evidence of her ill-health and appreciate the truthfulness of her claim to need constant medication and examination and assistance. This is supported by independent evidence but there is nothing to show this is not available to her in Barbados. It fails on the Article 3 grounds as indicated above and adds almost nothing to the Article 8 balancing exercise.

81. I have reflected on Mr Fazli’s arguments and the papers before me as a whole as well as the items that I have commented on individually. I have no hesitation for coming to the conclusion that this is an appeal that must be dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 January 2024

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001728

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 August 2022	.....

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

JENIS IFILL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M West, Counsel instructed by Equity Law Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

REASONS FOR FINDING ERROR OF LAW

1. This is an appeal by a citizen of Barbados against a decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State refusing her leave to remain on human rights grounds.
2. The appellant is subject to a deportation order. In summary outline, for the purposes of introduction only, it is her case that removing her from the United Kingdom would be a disproportionate interference with her private and family life, particularly her need to obtain medical treatment and/or in the alternative breach of her rights under Article 3 of the European Convention on Human Rights because of her severe physical ill health.
3. The grounds of appeal to the Upper Tribunal, not settled by Mr West, encompass many criticisms of the First-tier Tribunal's decision but I found they lacked focus in identifying an error of law.
4. The first ground is entitled "Making a mistake as to a material fact which could be established by uncontentious evidence can have a direct effect on the outcome of the proceedings."

5. The judge found both the appellant's oral evidence and her written evidence "equally unreliable".

6. Mr West, in his submissions, criticised the entire approach here although it is not really encapsulated in the ground. His point was that it is trite law that the judicial fact-finder should look at the evidence in the round and decide to what extent the documentary evidence illuminates the written evidence but what the judge at least appears to have done here is to have decided that the appellant had not told the truth and then looked at the documents and then decided that they were not reliable either. The judge has invited this criticism by stating at paragraph 36 of the Decision and Reasons:

> "I have concluded that it would not be sound to rely on the truthfulness of any of the appellant's oral evidence. Unusually, however, the documents she has produced are in large part also equally unreliable."

I have not found anything in the Decision and Reasons that reassures me that the correct approach has been followed.

7. However, the point taken in the grounds is that the judge appears to have made findings that did not take account of the evidence that was before him. The ground points out that the judge did not believe that the appellant is involved in or is considering a medical negligence claim arising from surgery that she underwent and the outcome was unsatisfactory. The judge's criticism is that there was a case summary prepared in support of her medical negligence claim but said it was prepared by an unidentified legal practitioner. The judge noted that there was no action number or court details and noted that the appellant was unable to name her solicitor or provide any information about the progress of the claim.

8. However, as the grounds point out, at page 44 of the bundle the judge had a "screening medical report on 'causation' prepared by Mr John B Murdoch, a consultant gynaecologist MD FRCOG" and the instructing solicitors are identified as Girlings Solicitors and the writer is identified as a Michelle Meakin of Girlings Solicitors. It was submitted that there clearly was evidence of the kind the judge said was lacking. The absence of a cause number was a consequence of the action not yet having been filed. The evidence is that proceedings were being contemplated seriously and it was argued that the judge gave an unlawful reason for rejecting that evidence because it was based on a misunderstanding of the facts.

9. I find that criticism is made out. Although the judge accepted that the appellant has medical problems the judge did not accept that they were as extensive as she claimed. This finding was made without reference to letters from the appellant's general medical practitioner and a medical practitioner of the Royal Marsden NHS Foundation Trust and various consultants at Guy's and St Thomas' Hospital. I do not see it necessary to set out the details of these reports. They are of a very personal nature and no need to be in the public domain. The point is the judge has rejected the extent of the ill health and has based that conclusion on what I find is a clearly unsound reason.

10. The grounds further complain that the judge gave weight to an "immaterial fact" where the judge says "the sentencing judge had been informed of

offences committed by the appellant in the US as well as in the UK, although they could not be formally proved."

11. The judge sitting at the Central Criminal Court, in his sentencing remarks described the appellant as "a thoroughly dishonest woman". The judge did indeed refer to being told that the appellant had been convicted of "grand larceny and forgery" but the matters were not proved formally. If they were not proved formally, and the appellant denied them in categorical terms, which she clearly did, it is difficult to see what relevance they have to the decision that the judge had to make. It does not appear that the judge gave much to this point but I do not why it should be given any weight.

12. I also find some merit in the criticism of the judge's approach to the availability of medical treatment in Barbados. The judge did not note that there was no direct evidence that treatment was available for "solitary fibrous tumour affecting her uterus" but did not direct himself specifically to the availability of the treatment to this appellant.

13. Grounds 4 and 5 I find add little or nothing but do direct me to another point of considerable concern. The Secretary of State in the explanation of the decision decided, or appears to have decided, that the appellant has caused serious harm. The reasons for that are not particularly detailed. At paragraph 26 of the decision the respondent says:

> "Your deportation is conducive to the public good and in the public interest because you have been convicted of an offence which has caused serious harm. Whilst it is acknowledged that your specific offences did not cause serious harm to a specific person, the Secretary of State takes a dim view on fraud and false documentation offences that contribute to a wider issue which causes serious harm to the security of the United Kingdom."

14. Paragraph 27 then indicates why the Secretary of State regards the offence as serious and at paragraph 28 says the Court of Appeal:

> "have repeatedly said that offences of this kind have a very substantial damaging effect upon the international reliability of our system of passports and on the immigration laws intended to control people who enter and leave the United Kingdom. It is an offence that has implications at the level of national security."

15. That does not make it easy for me to see that the appellant "has been convicted of an offence that has caused serious harm". This is a necessary requirement for her to be a "foreign criminal" within the meaning of Part 5A of the Nationality, Immigration and Asylum Act 2022. She has not been sentenced to a period of at least twelve months' imprisonment except by considering the aggregate of consecutive terms and she is clearly not a persistent offender.

16. Arguably, the Secretary of State's views do not bind the judge and I find the case cries out for a specific finding on whether the appellant is a "foreign criminal".

17. Paragraph 29 of the Decision and Reasons appears to suffer from poor proofreading. It really is not possible to tell with complete confidence whether something was a submission by the Presenting Officer or a finding by the judge. I set out below paragraph 19 of the Decision and Reasons, doing my

best to reproduce it accurately. It can at best be described as unconventional. The judge said:

> "The appellant denied using a false NI number, which was set out on the charges sheet from the Magistrates' Court. The charges ultimately formed the basis of the indictment at the Central Criminal Court. The appellant said: '... I explained to my defence lawyer and that I had lost my national insurance card and they gave me a new number'. It was hard to follow her explanation but she appeared to suggest that the deception offences, of which she was convicted in 2016, related to her loss of a national insurance card. Her explanation was in any event totally unconvincing and add automate reporting already being rejected by the caps central caps criminal caps court dash the offences having been committed there by the before the City of London Magistrates' Court. It was up to her she had made false statements in an application for housing benefit. Again a long explanation followed also connected need to acquire a new national insurance number."

18. I know to my own embarrassment that poor proofreading is an easy error, especially by a judge who is tired and anxious to finish something in good time but this does, I find, undermine the confidence I can have in the decision.

19. Mr Walker gave me a copy of the Rule 24 response dated 14 January 2022. The gist of these is that the decision as a whole is satisfactory and the judge was entitled to make the adverse findings that he did. In particular, there was no medical evidence that specialist treatment was required in Barbados beyond that which could be expected from an oncologist which would be available there.

20. Further Mr Walker argued very firmly that the errors are not material. It is very difficult to justify removal on human rights grounds for medical treatment for a person not otherwise entitled to remain and the evidence simply does not show a sufficiently severe condition to support that conclusion. I was attracted by that argument and it may yet prevail but I am not satisfied for the reasons given that this is a deportation case for the purposes of Part 5A and if it is not, a more relaxed approach could be appropriate.

21. A point was made in the hearing room that the appellant is impecunious. I deduce from that, although this is not the way the matter was put, that it is not advantageous to her to have further hearings for the sake of it. She would find it hard to get the necessary representation. I have considered that but I find the combination of deficiencies makes the decision unsatisfactory. My main concern is that wrong reasons had been given to support a conclusion which may be material although I am much more confident that it is wrong than I am that it will make any difference at the end of the day.

22. Put simply, I find that the appellant is entitled to something a bit better than this. I find the First-tier Tribunal erred in law and I set aside its decision. Contrary to the submissions from Mr West, I have decided it should remain in the Upper Tribunal. I will particularly appreciate assistance in deciding if this is a case where Part 5A applies.

Notice of Decision

23. The First-tier Tribunal erred in law. I set aside its decision and I direct that the appeal be redetermined in the Upper Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 15 November 2022